

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SBC Petition for Declaratory Ruling)	
That UniPoint Enhanced Services, Inc.)	
d/b/a PointOne and Other Wholesale)	
Transmission Providers Are Liable for)	
Access Charges)	WC Docket No. 05-276
 Petition for Declaratory Ruling that)	
VarTec Telecom, Inc. Is Not Required to)	
Pay Access Charges to Southwestern Bell)	
Telephone Company or Other Terminating)	
Local Exchange Carriers When Enhanced)	
Service Providers or Other Carriers)	
Deliver the Calls to Southwestern Bell)	
Telephone Company or Other Local)	
Exchange Carriers for Termination)	

**REPLY COMMENTS OF THE
VERIZON TELEPHONE COMPANIES**

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**REPLY COMMENTS OF THE
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A wide range of commenters, including CLECs, independent LECs, ISPs, associations, and ILECs,² agrees that the interstate calls carried by PointOne and delivered to SBC for termination are subject to access charges. This is not surprising, since the Commission has already held explicitly that when a call originates on the public switched telephone network ("PSTN"), is converted into IP format, transported and then converted back from IP format, and "deliver[ed] . . . to the called party through local exchange carrier (LEC) local business lines," the call "is a telecommunications service upon which interstate access charges may be

¹ The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

² E.g., Alltel, Cinergy, CenturyTel, Broadwing, Frontier, NECA/OPASTCO/USTA, BellSouth, Qwest.

assessed.”³ And the Commission has further held unequivocally that this is so, “regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.” *Id.*

PointOne argues that it is exempt from access charges because, it says, the service it provides is an information service and it is an information service provider. According to PointOne, this status provides it a blanket exemption from paying access charges. *See* PointOne Comments at 2, 12. Verizon has already explained that PointOne is wrong. *See* Verizon Comments at 2-6. For the calls at issue here, PointOne is transporting ordinary long distance calls that originate on the PSTN in one exchange and terminate on the PSTN in another exchange. For these purposes, therefore, PointOne is an interexchange carrier and is providing a telecommunications service that is subject to access charges. *Id.* at 6-8.

Introduction and Summary. The Commission has already ruled that the calls at issue here are telecommunications services. PointOne is a provider of these services and therefore is obligated to pay access charges on these services. The fact that PointOne may be an information services provider with respect to some of its service offerings, other than those at issue here, does not exempt it from access charges when it is providing telecommunications services.

Similarly, claims by the Joint CLECs that they are exempt from access charges, simply because they are CLECs are incorrect. It is the nature of the traffic, not the identity of the provider, that determines whether the traffic is subject to access charges. Moreover, the Commission has made clear that section 251(b)(5) reciprocal compensation obligations apply

³ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457, ¶ 1 (2004) (“*AT&T IP-in-the-Middle Order*”).

only to traffic that originates and terminates within a local area and do not apply to the transport or termination of interstate or intrastate interexchange traffic.

Finally, the calls at issue here are interstate calls that originate on the PSTN in one exchange and terminate on the PSTN in a different exchange. They are, therefore, a telecommunications service. Any “protocol conversion” or “interaction with “customer-supplied information” performed by PointOne does not transform these PSTN-to-PSTN calls into an information service.

1. Interstate interexchange telecommunications services are subject to access charges regardless of the provider’s claimed status. a. PointOne argues extensively that simply because some services it offers may qualify as information services, it is an information service provider for all purposes and is automatically exempted from payment of access charges on any services it offers. PointOne Comments at 3-9. But, the fact that an entity may be an information services provider with respect to some of its service offerings other than those at issue here does not exempt it from access charges when it is providing telecommunications services. *See, e.g., Southwestern Bell Telephone Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994) (“one can be a common carrier with regard to some activities but not others”) (*quoting NARUC v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)). In the *AT&T-IP-in-the-Middle Order* the Commission made clear that it is the nature of the traffic, not the identity or status of the provider, that determines whether the traffic is subject to access charges. *AT&T IP-in-the-Middle Order*, ¶ 19 n.80 (noting that, “[d]epending on the nature of the traffic, carriers such as . . . CMRS providers, incumbent LECs, and competitive LECs may qualify as interexchange carriers” for purposes of Commission Rule 69.5(b), which “impos[es] access charges on ‘interexchange carriers that use local exchange switching facilities for the provision of interstate . . . telecommunications

services’’). As noted above, the Commission has already ruled that the calls at issue here are telecommunications services. *Id.* ¶ 1. As Verizon has already explained, PointOne is a provider of these services and therefore is obligated to pay access charges on these services.

b. NuVox, XO, and Xspedius make a similar argument based on their status as CLECs. They claim that “access charges do not apply to any LECs” and that “switched access tariff charges do not apply to CLEC traffic carried over interconnection trunks.” Joint CLEC Commenters at i (emphasis omitted). Again, it is the nature of the traffic, not the identity of the provider, that determines whether the traffic is subject to access charges. Calls that originate on the PSTN in an exchange in one state and terminate on the PSTN in a different exchange in another state are interstate interexchange calls, and they are a telecommunications service subject to interstate access charges, even when the call is “deliver[ed] to the called party through local exchange carrier . . . local business lines.” *AT&T-IP-in-the-Middle Order*, ¶ 1; *see also id.*, ¶ 11 and n.49.

The Joint CLECs do not explicitly argue that such traffic should be subject to reciprocal compensation, but that is the clear effect of their request to be exempt from access charges when they deliver interstate interexchange traffic to ILECs over local interconnection trunks. Reciprocal compensation, however, is reserved for the exchange of *local* traffic.

Shortly before the 1996 Act, a number of states had adopted new compensation regimes for the exchange of local traffic, while also carefully maintaining the existing access-charge regimes for interexchange calls.⁴ These state commissions referred to the new compensation

⁴ See, e.g., *Order Instituting Rulemaking Into Competition for Local Exchange Service*, No. 95-12-056, 1995 Cal. PUC LEXIS 966, at *48-*49 (Dec. 20, 1995) (establishing “bill and keep for *local* calls,” and requiring with respect to *interexchange* traffic that “CL[E]Cs will pay terminating access charges based on the LEC’s existing switched access tariffs” (emphasis added)); *Petition of MCI Telecommunications Corporation*, Nos. 39948 & 40130,

regime for the exchange of local traffic as “reciprocal compensation.” When Congress passed the 1996 Act against this backdrop, it too was careful to preserve the established access charge regimes for interexchange traffic, while creating a new reciprocal compensation scheme for local traffic. Congress did so both through the express terms of Section 251(b)(5), which created a new compensation mechanism for the exchange of *local* traffic, and through other provisions that confirm that Section 251(b)(5) was not intended to disrupt the existing access charge regime.

First, as the states commissions had done, when Congress adopted a new “reciprocal compensation” mechanism, it carefully limited that mechanism to *local* traffic exchanged by competing *local exchange carriers*. Unlike other provisions that apply to all telecommunications carriers (e.g., Section 251(a)), Congress included this new provision in a section of the Act that applies exclusively to interconnecting “local exchange carrier[s]” (i.e., Section 251(b)).⁵ Congress also chose terms that both defined the nature of the traffic subject to this new mechanism and imposed specific requirements for any compensation arrangements for that traffic. Specifically, Congress made clear that the new compensation mechanism applied *only* to traffic that *originates* on the network of one LEC and terminates on the network of the interconnecting LEC, and not to traffic that traverses an interexchange network. Thus, in Section 251(b)(5), Congress imposed obligations only on interconnecting LECs to establish “compensation arrangements for the *transport and termination* of telecommunications.” Section

1995 Ind. PUC LEXIS 399, at *34 (Nov. 21, 1995) (establishing “the form and amount of compensation to be paid for completion of local calls between MCI’s and Ameritech Indiana’s respective networks”); *Illinois Bell Tel. Co.*, No. 94-0096, 1995 Ill. PUC LEXIS 230, at *208 (Apr. 7, 1995) (explaining that the Illinois commission adopted “one compensation structure for the termination of ‘local’ traffic and the existing switched access charges for the termination of all other traffic”).

⁵ *Local Competition Order*, 11 FCC Rcd 15499, ¶ 1001 (1996) (stressing that “Section 251(b) imposes duties *only* on LECs”) (emphasis added); see also H.R. CONF. REP. NO. 104-458, at 121 (1996) (explaining that Section 251(b)(5) applies to “all local exchange carriers, including the ‘new entrants’ into the local exchange market”).

251(b)(5) also provides that these arrangements are to be “reciprocal,” with each LEC obligated to enter into such arrangements with other LECs, which would both “transport *and* terminat[e]” traffic received from the originating LEC. By its terms, therefore, Section 251(b)(5) excludes long distance traffic, which does not terminate on the network of an interconnecting LEC but instead traverses an interexchange carrier’s network (either of an independent IXC or of the originating or terminating carrier acting as an IXC). Indeed, in many instances, the traffic is not exchanged with another LEC at all, but instead is exchanged directly with an IXC.⁶

Second, in the accompanying pricing provision in Section 252, Congress expressly provided that reciprocal compensation extends only to calls that “originate” on one LEC’s network and “terminat[e]” on the interconnecting LEC’s network.⁷ Again, this language necessarily excludes interexchange calls, which are the subject of the access charge regime, because those calls typically are not handed from the originating LEC to an interconnected terminating LEC – rather, they traverse an interexchange carrier’s network before being handed off to another local exchange carrier en route to their final destination. Each of these provisions, by its terms, demonstrates that in Section 251(b)(5) Congress was creating a new compensation regime applicable only to local calls exchanged between interconnecting LECs, and not to interexchange calls subject to the well established access charge regimes.

⁶ See *Local Competition Order*, ¶ 1007. In the *Local Competition Order*, the Commission repeatedly recognized that § 251(b)(5) is limited to local traffic. See *id.* at ¶ 1032 (“Congress intended to confine [§ 251(b)(5)] to local traffic.”); *id.* at ¶ 1033 (“The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic.”); *id.* at ¶ 1034 (concluding that “section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area”).

⁷ 47 U.S.C. § 252(d)(2)(A)(i) (“recovery by each carrier of costs associated with the transport and *termination on [its] network facilities* of calls that originate on the network facilities of the other carrier”) (emphasis added); *id.* § 252(d)(2)(A)(ii) (“such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of *terminating* such calls” (emphasis added)).

Third, the Commission itself has agreed with this construction of the Act's terms. In its original rulemaking proceeding to implement the 1996 Act, the Commission expressed concern that interpreting Section 251 to permit IXCs "to circumvent Part 69 access charges" would be "contrary to Congress' focus in th[at] section on promoting local competition" and "inconsistent with other provisions in section 251, such as sections 251(i) and 251(g)."⁸ The Commission also recognized that interpreting Section 251 to apply to interexchange traffic subject to the established access charge regime would "effect a *fundamental jurisdictional shift* by placing interstate access charges under the administration of state commissions."⁹ In its *Order* in that same proceeding, therefore, the Commission held that the "Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long distance traffic."¹⁰ According to the Commission, "section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area," and "do[es] not apply to the transport or termination of interstate or intrastate interexchange traffic."¹¹ The Commission held that this "reading of the statute is confirmed" by the accompanying pricing provision in Section 252, which "provides for 'recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.'"¹² Although numerous parties challenged various aspects of the *Local Competition Order*, this aspect of the Commission's *Order* was never challenged, let alone reversed. Contrary to the

⁸ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 14171, ¶ 164 (1996).

⁹ *Id.* at ¶ 164 (emphasis added).

¹⁰ *Local Competition Order*, ¶ 1033.

¹¹ *Id.* at ¶ 1034.

¹² *Id.*

arguments of the CLECs, therefore, interexchange traffic delivered over local interconnection trunks remains subject to access charges.

c. The Joint CLECs argue that CLECs may be involved in jointly providing access with an ILEC, and that they should not be subject to access charges if they do that. Joint CLEC Comments at 9 and n.18. It is true that there are situations where two LECs may jointly provide terminating access for interstate interexchange calls. In those cases, the LEC providing the tandem switching function – the first LEC to which the call is handed – must transmit the call *and* all of the call identifying information to the terminating LEC so the terminating LEC can identify the interexchange carrier and bill interstate access charges. In those cases, the two LECs share the access charges to pay for the services each provides. But if the first LEC has contracted with the interexchange carrier to intercept the long distance call and hand it to the terminating LEC over local interconnection trunks in order to avoid access charges, then the first LEC is *not* “jointly providing access” and instead is jointly and severally obligated to pay the interstate access charges.

2. The interstate long distance calls at issue here are telecommunications services to which interstate access charges apply, not information services. No commenter disputes the fact that the calls at issue here are interstate calls that originate on the PSTN in one exchange and terminate on the PSTN in a different exchange.¹³ Similarly, there is no dispute that PointOne is

¹³ A few commenters argue that other types of calls should not be subject to access charges. *See, e.g.*, UTEX Comments at 2, 5, 8-9; Earthlink Comments at 5 and n.10. As Verizon has explained in detail elsewhere, voice long distance call that uses the PSTN should be subject to access charges whether the calls originate on the PSTN or in IP format. *See, e.g., Verizon Comments, IP-enabled services NPRM*, WC Docket No. 04-36, at 42-47 (filed May 28, 2004) ; *Reply Comments* at 21-28 (filed July 14, 2004); *Letter from Kathleen Grillo, Verizon, to Marlene Dortch, FCC*, WC Docket No. 03-266, (filed Feb. 11, 2005). However, that issue is not part of the primary jurisdiction referral from the court, and the Commission need not address it here.

transporting the calls from one exchange to another. As a result, as Verizon explained in its Comments, PointOne is an interexchange carrier with respect to the traffic at issue here, and is obligated to pay access charges on that traffic.

PointOne claims, however, that its service “acquires the information (generally voice communications)” and “transforms it into IP format when it originates in any different format, and processes it;” “involves interaction with and changes to customer-supplied information (‘content’) with every session;” and that its network “makes a wide range of enhancements available to customers on every communication that traverses its network.” PointOne Comments at 11. As a result, according to PointOne, the service it offers is an information service that is not subject to access charges. PointOne Comments at 9-12. PointOne is wrong.

Neither the “transform[ation]” into IP format, nor the “interaction with and changes to customer-supplied information” described by PointOne brings PointOne’s service within the Commission’s “ISP exemption” from access charges that would otherwise apply. Verizon has already explained that services that involve a so-called “net protocol conversion” do not fall within the scope of the ISP exemption when that conversion is “necessitated by the introduction” of new technology on a “piecemeal” basis in order to maintain compatibility with the existing

UTEX also claims, in passing, that the “real problem” is that ILEC switched access rates are “far in excess of cost.” UTEX Comments at 4 n.10. The Commission rejected similar arguments in its *AT&T IP-in-the-Middle Order* (at ¶ 18). In any event, UTEX is wrong. In 2000, the Commission sharply cut switched access charges by approving the CALLS plan. The CALLS plan was developed by “two groups representing historically opposing positions, *i.e.*, LECs (sellers of access services) and IXC’s (buyers),” who “negotiated with each other in good faith and fashioned a reasonable compromise that both addresses their competing interests and serves the broader public interest.” *CALLS Order*, 15 FCC Rcd 12962 at ¶ 48 (2000). The Commission found that the resulting rates “are just and reasonable [and] are within the range of estimated economic costs of switched access” *Id.* at ¶ 176; *see also id.* at ¶¶ 29, 41, 49.

network and equipment.¹⁴ Indeed, the paradigm example of such basic protocol conversion service – “a carrier-provided end office analog to digital conversion that permits an analog terminal to be accommodated by a network that is evolving to digital status,”¹⁵ is directly analogous to IP-in-the-middle traffic. Just as the network previously evolved from analog to digital, the network today is evolving from circuit-switched to IP technology, and carrier-provided protocol conversions are needed to permit IP terminals and equipment and TDM terminals and equipment to communicate with one another. Verizon Comments at 4-6.

In the *AT&T IP-in-the-Middle Order*, ¶ 4 n.13, the Commission explained that there are “three categories of protocol processing services that would be treated as basic services.” Namely, “protocol processing: (1) involving communications between an end user and the network itself . . . (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking The first and third identified categories of processing services result in no net protocol conversion to the end user.” *Id.* (citations omitted). PointOne claims that its service involves a net protocol conversion. But the Commission’s second category also involves a net protocol conversion; it nonetheless is considered a basic telecommunications service, not an information service as is PointOne’s.¹⁶

¹⁴ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 12 FCC Rcd 2297, ¶ 2 n.6 (1997) (citations omitted).

¹⁵ *Amendment to Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, ¶ 70 (1987).

¹⁶ Even if PointOne’s service does not involve a net protocol conversion, the third category – “internetworking,” which the Commission defines as “conversions taking place solely within the carrier’s network to facilitate provision of a basic network service,” *AT&T IP-in-the-Middle Order* ¶ 4 n.13 — would seem to apply. Again, the Commission has made clear that such “protocol processing services . . . would be treated as *basic* services.” *Id.*

Similarly, the “interactions” with the “customer-supplied information” described by PointOne do not transform its service into an information service. Although PointOne attempts to analogize the interactions to “translating [a letter] from English to French, spell checking, correcting grammatical errors, and replacing missing words,” Shiffman Decl. ¶ 5, the “different signaling protocols and codecs” that “change the content of the information transmitted,” *id.*, all appear to be designed to make sure that the words the caller speaks into his or her PSTN phone at one end of the call can be heard by the called party using his or her PSTN phone at the other end. *See id.* The calls thus involve transmitting information “between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” PointOne has not, in fact, changed the words or information the caller is conveying. They are telecommunications, *see* 47 U.S.C. § 153(43), and the service PointOne offers is a telecommunications service. *Id.* at § 153(46).

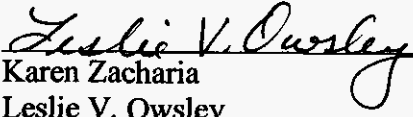
Finally, PointOne claims that it makes “enhancements” available to customers on every communication. As described by PointOne, “a user may initiate a communication session to another user and then invoke different network resources, such as retrieving a real-time stock quote from the Internet on each and every call.” Shiffman Decl. ¶ 6. But the “communication session” at issue here is a call that originates on the PSTN in one exchange and terminates on the PSTN in another exchange. As discussed earlier, that is a telecommunications service, and PointOne’s “enhancement” does not change the basic nature of that call, or transform it into an information service.¹⁷ Therefore, PointOne is obligated to pay access charges on this traffic.

¹⁷ *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services*, 20 FCC Rcd 4826, ¶¶ 14-21 (2005).

For the foregoing reasons, the Commission should grant SBC's petition.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.